



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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September 29, 2016

**By ECF**

Honorable Thomas P. Griesa  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: Re: Joshua Wiles v. City of New York et al.,  
13 CV 2898 (HB)

Your Honor:

I am a Senior Counsel in the Office of Zachary Carter, Corporation Counsel of the City of New York, representing defendants in the above-referenced civil rights matter. Defendants submit this letter regarding an important Court ruling that impacts defendants' outstanding summary judgment motion in this case, docket entry [114], filed timely per the Court's order, docket entry [110].

As the Court is aware, this case was filed and identified as related to the case of Mediavilla v. City of New York et al., 14cv8624. Plaintiff's counsel acknowledged that the cases were related as both were at "the same date and location" of the November 5, 2011 arrest of plaintiff Wiles. Mediavilla v. City of New York, et al., 14cv8624 (VSB), docket entry [3]. Plaintiff's counsel also acknowledged that the discovery from Wiles significantly overlapped and sought to adopt discovery from Wiles for use in the Mediavilla matter. Mediavilla v. City of New York, et al., 14cv8624 (VSB), April 23, 2015 Conference Transcript, p. 7: 8-15. Plaintiff also used Wiles discovery in motion practice including their summary judgment opposition and motion to amend. Mediavilla v. City of New York, et al., 14cv8624 (VSB), Plaintiff's Declaration, docket entry [65], exhibits M-O; video exhibits F-I. This included but was not limited to deposition transcripts from Lt. Zielinski, Chief Anger, and Officer McNamara, as well as videos of the incident.

The Mediavilla Court relied upon many of the same transcripts and videos of the November 5, 2011 incident set before the Court in Wiles. For example, Mediavilla defendants' exhibits 2D and 2E, docket entries [54-4] and [54-5] are the videos before the Court in Wiles as defendants' exhibits G and H, docket entries [115-7] and [115-8]. As set forth above the transcripts of Officer McNamara, Lt. Zielinski, and Chief Anger, were also relied upon in both

motions. See transcripts in Wiles at docket entry [115-10] [115-11] and [115-12]. The discovery and evidence significantly overlaps because both cases and motions for summary judgment considered, inter alia, the orders to disperse issued to the protestors in front of the steps of 60 Centre Street. Ultimately, this evidence shows both the substance and propriety of the lawful orders issued by the police on November 5, 2011.

In an Opinion and Order dated September 29, 2016, docket entry [99], Judge Broderick ruled that the repeated orders to clear the sidewalk issued on November 5, 2011 to protestors in front of 60 Centre Street were lawful. Those lawful orders provided one basis for finding that defendants had both probable cause and qualified immunity to arrest. See Mediavilla Summary Judgment Decision attached as Exhibit 1, p. 20-22; Mediavilla v. City of New York, et al., 14cv8624 (VSB), docket entry [91], p. 20-22. (“Here, the officers’ orders to disperse were lawful.”)

As the same evidence relied upon in the Mediavilla decision shows the repeated orders to disperse; and the well-reasoned decision of the Court found those orders lawful; and the plaintiffs in both case were not only united in interest, but represented by the same attorney, and litigating about the exact same police orders; this Court should similarly find, as the Mediavilla Court did, that those repeated police orders were lawful, that probable cause existed, and defendants are entitled to qualified immunity.

Thank you for your consideration.

Respectfully submitted,

/s/

Andrew Lucas

*Senior Counsel*

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